

**CENTRAL PUGET SOUND
GROWTH MANAGEMENT HEARINGS BOARD
STATE OF WASHINGTON**

F. ROBERT STRAHM,)	Case No. 05-3-0042
)	
Petitioners,)	(Strahm)
)	
v.)	
)	
CITY OF EVERETT,)	FINAL DECISION AND ORDER
)	
Respondent.)	
)	

I. SYNOPSIS

On August 1, 2005, the City of Everett published notification that it had adopted its required GMA Plan Update. In its Plan Update, the City incorporated an incentive and investment based redevelopment strategy focused on its principle transportation corridors and the central area of the City. In September, Petitioner Strahm challenged the City's actions asserting that the population and employment targets adopted by Everett were in excess of its land capacity and that rather than increasing densities to accommodate growth, the City had effectively reduced densities by reducing height limits in certain zones, among other things.

The Board found that Petitioner's contention was correct; the City's land capacity analysis indicated a discrepancy between land capacity and the population to be accommodated. The discrepancy appeared to occur within the City's unincorporated planning area, its municipal urban growth area (MUGA), rather than within the city limits. However, the City's land capacity analysis did not distinguish between the city proper and the unincorporated planning area. While the Board agrees that the City's redevelopment strategy has merit in meeting future population needs without necessarily increasing density; the Board nonetheless, found noncompliance with RCW 36.70A.110(2), .130(3) and .115 and remanded the Plan Update to the City for an updated land capacity analysis for the city limits and directed the City to reconcile, with Snohomish County, the discrepancy in 2025 population targets and the size of the City's MUGA. A compliance hearing was set for April of 2007.

II. BACKGROUND

On September 29, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from F. Robert Strahm (**Petitioner** or **Strahm**). The matter was assigned Case No. 05-3-0042, and is hereafter referred to as *Strahm v. City of Everett*. Board member Bruce C. Laing initially assumed the role of

Presiding Officer for this matter. Petitioner challenges the City of Everett's (**Respondent or City**) adoption of Ordinance No. 2855-05, which adopts the City's Comprehensive Plan Update, as noncompliant with the Growth Management Act (**GMA or Act**).

In October 2005, the Board issued its Notice of Hearing and held the prehearing conference. In November 2005, the Board issued its prehearing order (**PHO**) in this matter. The PHO also granted a 90-day settlement extension. In February 2006, a second 90-day settlement extension was granted by the Board. There were no motions to supplement the record or dispositive motions filed in this matter.

All briefing and exhibits were timely filed. Hereafter the prehearing briefs will be referred to as:

- Petitioner F. Robert Strahm's Prehearing Brief – (**Strahm PHB**)
- Respondent City of Everett's Prehearing Brief – (**Everett Response**)
- Petitioner F. Robert Strahm's Reply Brief (**Strahm Reply**).

- The Everett Comprehensive Plan – August 2005 is the Core Document – (**CD**)
- Exhibits filed with briefs – (**Exs. 1-24**, respectively)
- Exhibits referred to in motions to strike or motions to supplement are addressed under "Preliminary Matters," *infra*.

On August 3, 2006, the Board held a hearing on the merits (**HOM**) at the Board's offices in Suite 2470, 900 Fourth Avenue, Seattle, Washington. Board members Bruce C. Laing, Edward G. McGuire, and Margaret A. Pageler were present for the Board. Board member Laing opened the HOM as the Presiding Officer, explaining that his tenure with the Board was ending¹ and that David O. Earling had been appointed as the new Board member.² Mr. Laing then passed the gavel to Mr. McGuire, who would assume Presiding Officer duties for the remainder of this matter. David Earling and Board Law Clerk, Julie Taylor attended the hearing. Petitioner Strahm was represented by C. Thomas Touhy. Respondent City of Everett was represented by Eric S. Laschever. Court reporting services were provided by Andrea Clevenger of Byers and Anderson Inc. Dave Koenig, Mary Cunningham and Douglas J. Steding also attended the HOM. The hearing convened at 10:00 a.m. and adjourned at approximately 12:30 p.m. A transcript of the hearing was ordered.

On August 9, 2006, the Board received the transcript of the hearing. (**HOM Transcript**)

¹ Mr. Laing's tenure with the Board ended on August 9, 2006.

² Mr. Earling's term with the Board commenced on August 10, 2006.

III. PRESUMPTION OF VALIDITY, BURDEN OF PROOF and STANDARD OF REVIEW

Upon receipt of a petition challenging a local jurisdiction's GMA actions, the legislature directed the Boards to hear and determine whether the challenged actions were in compliance with the requirements and goals of the Act. *See* RCW 36.70A.280. The legislature directed that the Boards "after full consideration of the petition, shall determine whether there is compliance with the requirements of [the GMA]." RCW 36.70A.320(3); *see also*, RCW 36.70A.300(1).

Petitioner challenges the City of Everett's GMA Comprehensive Plan Update (**Plan Update**), as adopted by Ordinance No. 28855-05. Pursuant to RCW 36.70A.320(1), the City of Everett's Plan Update is presumed valid upon adoption.

The burden is on Petitioner to demonstrate that the action taken by the City of Everett is not in compliance with the goals and requirements of the GMA. RCW 36.70A.320(2).

Pursuant to RCW 36.70A.320(3), the Board "shall find compliance unless it determines that the action taken by the City is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of [the GMA]." For the Board to find Everett's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Dep't of Ecology v. PUD 1*, 121 Wn.2d 179, 201 (1993).

The GMA affirms that local jurisdictions have discretion in adapting the requirements of the GMA to local circumstances and that the Board shall grant deference to local decisions that comply with the goals and requirements of the Act. RCW 36.70A.3201. Pursuant to RCW 36.70A.3201, the Board will grant deference to the City of Everett in how it plans for growth, provided that its planning actions or policy choices are consistent with the goals and requirements of the GMA. The State Supreme Court's most recent delineation of this required deference states: "We hold that deference to county planning actions that are consistent with the goals and requirements of the GMA . . . cedes only when it is shown that a county's planning action is in fact a 'clearly erroneous' application of the GMA." *Quadrant Corporation, et al., v. State of Washington Growth Management Hearings Board*, 154 Wn.2d 224, 248, 110 P.3d 1132 (2005).

The *Quadrant* decision is in accord with prior rulings that "Local discretion is bounded . . . by the goals and requirements of the GMA." *King County v. Central Puget Sound Growth Management Hearing Board (King County)*, 142 Wn.2d 543, 561, 14 P.3d 133, 142 (2000). As the Court of Appeals explained, "Consistent with *King County*, and notwithstanding the 'deference' language of RCW 36.70A.3201, the Board acts properly when it foregoes deference to a . . . plan that is not 'consistent' with the requirements and goals of the GMA." *Cooper Point Association v. Thurston County*, 108 Wn. App. 429, 444, 31 P.3d 28 (2001); *affirmed Thurston County v. Western Washington Growth*

Management Hearings Board, 148 Wn2d 1, 15, 57 P.3rd 1156 (2002); *Quadrant*, 154 Wn.2d 224, 240 (2005).

The scope of the Board's review is limited to determining whether a jurisdiction has achieved compliance with the GMA with respect to those issues presented in a timely petition for review.

IV. BOARD JURISDICTION, ABANDONED ISSUES, PRELIMINARY MATTERS and PREFATORY NOTE

A. BOARD JURISDICTION

The Board finds that the Petitioner Strahm's PFR was timely filed, pursuant to RCW 36.70A.290(2); Petitioner Strahm has standing to appear before the Board, pursuant to RCW 36.70A.280(2); and the Board has subject matter jurisdiction over the challenged ordinance, which adopts the City of Everett's Plan Update, pursuant to RCW 36.70A.280(1)(a).

B. ABANDONED ISSUES

In briefing, Petitioner addressed all issues framed in the PHO; none of Petitioner's issues were abandoned.

C. PRELIMINARY MATTERS

Oral Rulings at the HOM:

After reviewing the motions, exhibits and hearing argument, the Presiding Officer made the following oral rulings at the HOM.

Exhibits 5, 7 and 8 are illustrative exhibits showing how Petitioner made the various calculations referred to in briefing. The data used in the illustrative exhibits comes from various documents contained in the Record and was therefore allowed. However, the Board acknowledges that the illustrative exhibits were never presented to the City during its proceedings.

- Everett's motion to strike Petitioner's Ex. 5 was **denied**.
- Everett's motion to strike Petitioner's Ex. 7 was **denied**.
- Everett's motion to strike Petitioner's Ex. 8 was **denied**.

Exhibit 9 is another illustrative exhibit showing Petitioner's interpretation of how floor area ratios (**FAR**) may affect density. The Board acknowledges that materials relied upon by Petitioner in this illustrative exhibit pertain to a subsequent action by the City – not the Plan Update. Nonetheless, since the City's Record for this action does suggest possible changes in FAR, the illustrative exhibit was allowed.

- Everett's motion to strike Petitioner's Ex. 9 was **denied**.

Proposed Exhibit 25 was the basis for Strahm's motion to supplement the record. It is a July 19, 2005 letter from Petitioner to the City offered to present the foundation for Exhibits 5, 7 and 8.

- Strahm's motion to supplement the record was **granted**. The July 19, 2005 letter was assigned **HOM Ex. 1**.

The City of Everett used a demonstrative exhibit at the HOM showing dwelling units under various densities. There were no objections to the demonstrative exhibit.

- The demonstrative exhibit was assigned **HOM Ex. 2**.³

During the Board's deliberations the Board will accord the appropriate weight, if any, to all exhibits presented or admitted in this proceeding.

At the HOM, the Board asked the City to provide a copy of Ordinance No. 2855-05 with the attached exhibits showing the deleted ~~striketrough~~ and new underlined language in the Plan Update.

On August 8, 2006, the Board received a signed copy of Ordinance No. 2855-05 with the attached "mark-up" copy of the Plan Update.

D. PREFATORY NOTE

The Action Challenged:

Petitioner Strahm challenges the City of Everett's adoption of Ordinance No. 2855-05, adopting the City of Everett's Plan Update. Everett's action was in response to the requirements of RCW 36.70A.130, requiring the City to conduct a review and evaluation of its GMA Plan and update and revise it as necessary to comply with the GMA.

Strahm's challenge focuses primarily on the Plan Update's Land Use Element, including the Future Land Use Map (**FLUM**), and the Housing Element. Various supporting documents to the Plan Update are involved in the arguments of the parties.

The U. S. Census documents that in 1990, there were 69,661 people living within the City of Everett. By 2000, an additional 21,827 residents were living in the City, yielding

³ On August 4, 2006, the Board received "Respondent City of Everett's Submission of Hearing on the Merits Exhibit 2." This is an 8 ½ x 11 copy of the demonstrative exhibit used at the HOM. On August 9, 2006 the Board received "F. Robert Strahm's Response to City of Everett's Submission of Hearing on the Merits Exhibit 2" indicating that it was an accurate depiction of the handwritten exhibit presented at the HOM.

a City population of 91,488 – a 31% increase in its population from 1990.⁴ During the same period the census shows that Snohomish County experienced an increase in population of 140,396.⁵ Everett has accommodated over 15% of the increase in County population.

Order of Board Discussion of Petitioner’s Legal Issues:

Petitioner Strahm posed seven issues in his PFR. These issues were framed as Legal Issues (A-G) in the Board’s PHO. The Board has grouped several of Petitioner’s Legal Issues together under the following three topical headings: 1) Accommodating Growth; 2) Internal Inconsistency; and 3) External and County-wide Planning Policy (CPP) Inconsistency. The Legal Issues are discussed as follows and will be addressed in the order presented:

- Accommodating Growth: Legal Issues A, C, D, E and G
- Internal Inconsistency: Legal Issue B
- External Inconsistency and CPP Inconsistency: Legal Issue F

V. LEGAL ISSUES AND DISCUSSION

A. LEGAL ISSUE NOS. A, C, D, E and G – ACCOMMODATING GROWTH

Legal Issue A⁶ alleges noncompliance with RCW 36.70A.110. Legal Issue C⁷ alleges noncompliance with RCW 36.70A.130. Legal Issue D⁸ alleges noncompliance with RCW 36.70A.115. Legal Issue E⁹ alleges that the City did not “show its work” in

⁴ CD - Plan Update, Introduction, at 10-11.

⁵ Office of Financial Management (OFM) website – Population Trends.

⁶ **Legal Issue A** – *Does the Plan Update fail to comply with RCW 36.70A.110(2), because the Plan Update is inconsistent with the requirement to “include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period” and with the Snohomish County countywide planning policies (including UG-13) and the City of Everett growth targets?*

⁷ **Legal Issue C** – *Does the Plan Update fail to comply with RCW 36.70A.130(3), because the City failed to revise the comprehensive plan to include densities required to accommodate the urban growth projected to occur in accordance with the Snohomish County Countywide planning policies and the City of Everett growth targets (See Plan Update, Ch 4.VI).*

⁸ **Legal issue D** – *Does the Plan Update fail to comply with RCW 36.70A.115 because it is inconsistent with the requirement to “provide sufficient capacity of land suitable for development within their jurisdiction to accommodate their allocated housing and employment growth as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management”?*

⁹ **Legal Issue E** – *Has the City failed to “show its work” in making the assumptions that adequate capacity to accommodate the population and employment allocated to it exists through merely accelerating redevelopment and encouraging increased densities (Plan Update Ch 4.III.B.8)?*

i. *Does the City’s SEIS referenced in the Plan Update (Plan Update C.1.III., p.6) lack the required evaluation needed to determine whether the City has the additional capacity to accommodate the Snohomish County Tomorrow population and employment targets?*

claiming it can accommodate the projected growth. Legal Issue G¹⁰ alleges noncompliance with RCW 36.70A.215.

Applicable Law

RCW 36.70A.110(2) provides in relevant part.

Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county *shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period. . .*

(Emphasized supplied).

RCW 36.70A.130(1) and (4) required the City of Everett to complete its periodic review and evaluation of its Comprehensive Plans and implementing development regulations by December 1, 2004. [Note that the timing of Everett's Plan Update is not at issue in this proceeding.] RCW 36.70A.130 provides in relevant part:

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, *each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.*

ii. *Does the Plan Update lack sufficient facts and analysis of how the increased density and rate of development required to fulfill the City's allocation of housing and employment growth can be achieved?*

iii. *Has the City failed to produce facts to support the conclusion in the Plan Update that it has capacity for the 22,577 additional dwelling units, when the "Buildable Lands" analysis cited in the Plan Update indicates only 18,605 units could be constructed (See Plan Update, Ch 4.III.B.8) and the City's March 17, 2004 update to its Buildable Lands Report indicated capacity for only 12,977 additional dwelling units?*

¹⁰ **Legal Issue G** – *Does the Plan Update fail to comply with RCW 36.70A.215 because the plan incorporates an incomplete land capacity review?*

i. *Does the Plan Update omit sufficient facts or analysis to support the City's assumptions of increased density and rates of development required to fulfill the City's allocation of housing and employment growth?*

ii. *Does the Plan Update employ an erroneous buildable lands analysis that is inconsistent with the methodology recommended by the Washington State Department of Community Trade and Economic Development?*

(3)(b) The county comprehensive plan designating urban growth areas, and *the densities permitted in the urban growth areas by the comprehensive plans of the county and each city* located within the urban growth areas, *shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period.* The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

RCW 36.70A.115 provides:

Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, taken collectively, adoption and amendments to their comprehensive plans and/or development regulations *provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management.*

(Emphasis supplied).

RCW 36.70A.215 establishes the Buildable Lands Review and Evaluation Program and requires Snohomish County, in consultation with its cities, to adopt a CPP governing the Buildable Lands Program. Snohomish County CPP UG-14 establishes the Buildable Lands Program for Snohomish County and each of its cities. The product of this effort is a Buildable Lands Report (**BLR**). The CPP indicates that the County, and its cities, has completed the review and evaluation program as reflected in the Snohomish County Tomorrow 2002 Growth Monitoring/Buildable Lands Report – January 2003 (SCT BLR). RCW 36.70A.215(1) states that the purposes of the Buildable Lands Program are to:

- (a) Determine whether a county and its cities are achieving urban densities within urban growth areas by comparing growth and development assumptions, targets, and objectives contained in the county-wide planning policies and the county and city comprehensive plans with actual growth and development that has occurred in the county and its cities; and
- (b) Identify reasonable measures, other than adjusting urban growth areas, that will be taken to comply with the requirements of this chapter.

Discussion

Position of the Parties:

Petitioner Strahm succinctly characterizes his challenge to the City of Everett's Plan Update as follows:

[T]he City has adopted growth targets for population and employment in the Update that are substantially in excess of the land capacities for population and employment for the year 2025, projected in the City's own buildable lands review and in excess of the City's assumed growth in population and employment under existing trends, while at the same time the Update does not propose to implement any material changes in land use policies, that could be reasonably expected to increase densities sufficiently to accommodate the adopted growth targets. In fact, the City has proposed to implement measures in the Update, that would actually reduce population density.

Strahm PHB, at 2-3.

Strahm then proceeds to provide numerous calculations, using City data, to demonstrate the gap between the land capacity and population to be accommodated in 2025. *Id.* at 3-9. Petitioner argues the City did not take meaningful measures to increase density in the Update, and that several amendments related to reducing building height and FARs will actually reduce density. *Id.* at 4-16. *See also Id.* at 19-22. Petitioner also questions whether the land capacity analysis methodology used by the City is consistent with the GMA's Buildable Land Requirements, the Snohomish County Tomorrow Methodology (SCT) or the Washington State Department of Community, Trade and Economic Development (CTED) guidelines. *Id.* at 26-28.

The City likewise states its view of the case succinctly:

The overarching issue presented in this case is whether the Growth Management Act requires local governments to increase the densities of land use designations in the name of accommodating projected population growth and employment figures, rather than to adopt strategies designed to achieve designated densities that would provide such capacity if more fully used.

Everett Response, at 1.

The City recaps its Plan Update process and argues that its future FLUM provides sufficient capacity to accommodate its future population and Petitioner has not shown otherwise. *Id.* at 2-8. The City then argues that it has made additional changes in the Plan Update, including redevelopment investments and incentives, which will yield increased densities. *Id.* at 8-15. The City also asserts that the GMA requirements of .215, the Buildable Lands Program, are not applicable to the Plan Update process or the land capacity methodology challenged by Petitioner. *Id.* at 17-19.

In reply, Strahm asserts, “the City has a duty, beyond merely making FLUM designations to perform actual planning to accommodate its share of forecasted growth.” Petitioner contends that accommodating growth in the Plan Update is not done in a vacuum, and that the BLR provides a basis for determining land capacity. Strahm Reply, at 2-3.

Board Discussion:

Buildable Lands, the Plan Update and .215 – Legal Issue G:

Petitioner has challenged the City of Everett’s *Plan Update*, not its 2003 Buildable Lands Program. Therefore, challenging the Plan Update’s compliance with the provisions of RCW 36.70A.215, which sets forth the requirements for the GMA’s Buildable Lands Program, is misplaced.

Snohomish County and its cities, including Everett, were required to participate in the Buildable Lands Program and conduct the review, evaluation and monitoring procedures mandated by the GMA. The CTED guidelines aided in establishing that program and the County’s CPPs set forth the process, including reliance on SCT as the forum for refining methodology and reconciling data. As mentioned *supra*, Snohomish County completed the SCT BLR in 2003. This, the SCT BLR, is the document directed by .215, not the City of Everett’s Plan Update. *See* Ex. 12.

The City of Everett also produced a BLR,¹¹ entitled City of Everett Buildable Lands Report, October 16, 2003 (**City BLR**). *See* Ex.2. The City BLR appears to use the same review and evaluation methodology as Snohomish County did with its report, the SCT BLR. However, again, it is the *Plan Update*, not the City BLR that is challenged here. In short, the provisions of RCW 36.70A.215 are not *directly* applicable to Everett’s Plan Update, and Legal Issue G will be **dismissed**.

Nonetheless, the BLR is not irrelevant to the Plan Update process. The Board has explained that although the BLR is retrospective, it provides updated and important information for evaluating GMA Plans and regulations, which are inherently prospective. In *CTED v. Snohomish County (CTED FDO)*, CPSGMHB Case No. 03-3-0017, Final Decision and Order, (Mar. 8, 2004), the Board stated:

The review and evaluation program (the Buildable Lands Program) is an assessment of the existing designated UGAs to determine whether they were appropriately sized and located to accommodate the urban growth projected for 2012; it is a 10-year assessment, and early warning sign, which allows jurisdictions to consider reallocating population or take other

¹¹ The Board further notes that the SCT BLR did not contain specific data for any of the Snohomish County cities located in the area referred to as the South West UGA (**SWUGA**). The SWUGA includes the City of Everett. Development in the SWUGA was reviewed and evaluated *in aggregate* for the entire SWUGA. Ex. 13, at 33, 34 and 61.

actions to encourage urban development within the UGAs, thereby avoiding the need to expand them. The BLR may also provide information for mid-course corrections if adjustments to the UGA as documented in the BLR are necessary.

The information developed for the Buildable Lands review and evaluation program provides updated and important information for updating and perhaps revising the County's *land capacity analysis*. *As noted in RCW 36.70A.215(1), it is not a substitute for the analysis for the land capacity analysis required by .110. Thus, if all else fails, information obtained from the .215 review and analysis may be drawn upon in updating or revising the required .110 land capacity analysis used to size, locate and designate a county's UGA.*

CTED FDO, at 21; (emphasis supplied).

Just as RCW 36.70A.110 requires a land capacity analysis for counties in designating UGAs, it compels a land capacity analysis for cities [cites with and without unincorporated urban areas adjacent to their city limits] to ensure they can accommodate newly projected growth allocations. The required land capacity analysis in .110 is also reflected in .130, for Plan Updates, again, to assure that the latest projected growth can be accommodated. This supporting documentation is required to enable cities and counties to discharge their respective duties to accommodate projected growth. There is a sound and logical link between the BLR's assessment of past activities, or periodic "check-in,"¹² and the land capacity analysis' evaluation of accommodating future growth. The information derived from the BLR should provide the basis for modifying planning assumptions, policies and designations and testing them against a future land capacity analysis to determine whether jurisdictions have the capacity to accommodate newly assigned growth within their jurisdictions.

It appears to the Board that this is exactly what the City of Everett has done. The City has undertaken its own "look back" review and evaluation of its development patterns and land capacity,¹³ continued to revise and update this information, and then used this information in determining capacity as part of its Plan Update. The March 11, 2004 "City BLR update" states,

¹² The Board notes that if the BLR review and evaluation reveals that densities are not being achieved within the jurisdiction, then *reasonable measures* must be taken to avoid the adjustment of UGAs. If UGAs are adjusted, or if new OFM population projections are assigned, a land capacity analysis must be performed to assure that the newly allocated population can be accommodated. In the recent Plan Update cycle, new OFM population projections drove much of the update review.

¹³ The 10/16/03 City BLR evaluates capacity for Everett's city limits and its planning area in meeting the 2012 population targets.

In June 2003, the Everett City Council revised the Planning Area boundaries *for purposes of the 2025 10-year Comprehensive Plan update*. The new Planning Area and Subarea boundaries are shown in Figure 1.

The tables that follow are updates to the tables in the Buildable Lands Report to reflect the new boundaries.

Ex. 2, at 1, following page 34, (emphasis supplied); *see also* Ex. 15, a land capacity analysis spreadsheet dated October 14, 2004, showing “Additional Population Capacity” for the selected *Plan Update* alternative.

2025 Population Targets, Land Capacity and .110 and .130 – Legal Issues A and C:

RCW 36.70A.110(2) and .130(3) contain two compatible and major directives. The first is that the State Office of Financial Management (**OFM**) must project population ranges for each GMA county. These are the *population drivers*, the urban growth, which the county, in conjunction with its cities, must accommodate. Second, this section of the Act directs the county and its cities to *include areas and densities sufficient to permit the urban growth* that is projected to occur. In order to comply with these directives, jurisdictions must undertake some form of land capacity analysis to determine whether their *areas and permitted densities* for the lands within their jurisdiction can accommodate the projected and allocated growth. Both of these GMA requirements speak in terms of providing *densities* to accommodate urban growth – compact urban development. Prior to addressing the arguments of the parties, the Board must review the context of the present dispute to discern the relevant facts from the materials presented.

Population

In the present matter, the OFM 2025 projected population range for Snohomish County and its cities was 795,725 on the low end and 1,062,903 on the high end of the range. Plan Update, Introduction, at 19. Snohomish County CPP UG-2 authorizes SCT to review these ranges and allocate urban growth among the County’s cities and unincorporated areas. SCT *narrowed* the OFM 2025 projected population ranges to 862,500 on the low side, and 996,200 on the high side. *Id.* The Board notes that these narrowed ranges fall within the OFM projected ranges and the parameters of .110.

SCT then allocated the population by developing draft 2025 target ranges for the County’s cities and urban areas and invited the cities to comment. The SCT population target for the City of Everett [within its city limits] was set at 123,060. Plan Update, Land Use Element (**LU**), at 12. The SCT also allocated a target population for the City of Everett’s planning area – the unincorporated area outside the city limits but within the UGA, a.k.a. the assigned municipal urban growth area (**MUGA**). There were two targets set for Everett’s MUGA: one assumed a larger boundary, the other a smaller boundary. The allocation target population for the smaller planning area/MUGA was set at 58,210; the larger planning area’s population target was set for an additional 11,245 people or a

total of 69,455. *Id.* The *total* SCT population allocations for the City of Everett and its planning area were set at 181,270¹⁴ (smaller MUGA) and 192,515¹⁵ (larger MUGA). *Id.*

In 2003, the City of Everett adopted *its own* 2025 population and employment targets and conveyed this information to SCT. Plan Update, LU, at 12. The City's adopted population target for its city limits was the *same as the SCT target* – 123,060. *Id.* The City's adopted targets for the two planning areas were *less than the SCT allocated targets*. For the smaller planning area, the City adopted a target of 167,519;¹⁶ for the larger MUGA, the City adopted a population target of 176,590.¹⁷ *Id.* Subsequent to the adoption of the City targets, the City reduced the size of its planning area and relied upon the target population of 167,519. *Id.* Thus, even with the reduced planning area, there is a discrepancy between the total target population allocated by the SCT [181,270] and that adopted by the City [167,519], a difference of 13,751 people. SCT did not modify or adjust the population target for Everett and its MUGA, but adopted its preliminary target of 181,270.

The discrepancy between the SCT population targets and the City's adopted targets appears to lie not within the city limits, but in Everett's planning area/MUGA – the unincorporated UGA. The City acknowledges this fact by stating, "Snohomish County Tomorrow adopted a preliminary target that was higher than Everett proposed for the unincorporated portion of Everett's Planning Area." *Id.*

To summarize, the 2025 target population adopted by the City of Everett for land within its city limits is 123,060; for the entire planning area/MUGA the City's adopted target is 167,519. The SCT allocated population target for Everett's city limits is 123,060. The SCT allocated population target for the entire planning area/MUGA is 181,270 (smaller MUGA). Everett's adopted city limit population target *equals* the SCT allocated population target. However, the City's adopted target for its entire planning area is *less* than that allocated by SCT – the entity charged with allocating population within Snohomish County. The discrepancy (13,751 people) between the City's 2025 target and the SCT target occurs in the unincorporated UGA, not within the Everett city limits.

Land Capacity

Having established its own target population to accommodate, the City then embarked on its Plan Update process. In addition to the target population, the City needed to know its capacity to accommodate growth – its land capacity. As noted *supra*, the City had produced its own buildable lands report in October of 2003 – City BLR.¹⁸ Also, as noted *supra*, this report provided the basis for the City's determination of its land capacity or

¹⁴ SCT targets: City 123,060 + small planning area 58,210 = 181,270.

¹⁵ SCT targets: City 123,060 + large planning area 69,455 = 192,515.

¹⁶ City adopted targets: City 123,060 + smaller planning area 44,549 = 167,519.

¹⁷ City adopted targets: City 123,060 + larger planning area 53,530 = 176,590.

¹⁸ The City BLR documents the land supply/demand status as of April 1, 2001. Ex. 2, City BLR, at 5.

additional population capacity¹⁹ for the Plan Update. The updated City BLR indicates that the total *additional* population capacity able to be accommodated within the city limits of Everett is 15,924, and for the entire *reduced* planning area (including the City) it is 27,125. Ex. 2, at 11 and 10, respectively.

The additional capacity must then be added to a base year population to determine how much population can be accommodated. In the Plan Update the additional capacity is added to the *2001 estimated population* – the base year for the original City BLR. The estimated 2001 population for the combined Everett city limits and reduced MUGA planning area is 131,003; for just Everett’s city limits the 2001 population estimate is 95,990. *See* Plan Update, Introduction, at 10; LU, at 14; and Ex. 3, respectively. Adding the additional population capacity derived from the March 2004 capacity analysis to the 2001 population estimates yields a total capacity within the city limits of 111,914 (15,924 + 95,990), and 158,128 (27,125 + 131,003) for the entire planning area/MUGA.

The most recent land capacity analysis provided in the Record, entitled “Additional Population Capacity” dated October 14, 2004, prepared specifically for the Plan Update, yields a total additional population capacity of 34,530 people for the entire planning area. Ex. 15.²⁰ Using the October 2004 capacity analysis yields a total population capacity of 165,533 (34,530 + 131,003) for the entire planning area/MUGA.²¹

To summarize, the baseline 2001 estimated population for the City is 95,990 and 131,003 for the entire planning area. The City BLR, adjusted in March of 2004, indicates that the total *additional* population capacity within Everett’s city limits is 15,924 or a total population capacity of 111,914. The same study indicates that the total *additional* population capacity within the City of Everett’s entire (*reduced*) planning area is 27,125 or a total population capacity of 158,128. The October 14, 2004 updated land capacity spreadsheet for the Plan Update indicates that the *additional* population capacity for the entire planning area is 34,530 or a total population capacity of 165,533.

The Plan Update – the Subareas and Scenarios

In developing the Plan Update the City of Everett identified six Subareas. Subarea 1 includes the northern part of the City, Subareas 2 and 3 encompass the central portion of the City, and Subareas 4, 5 and 6 lie on the southern border of the *reduced* planning area/MUGA. Virtually all of Subareas 1, 2, and 3 are within the city limits; Subarea 4 appears entirely outside the city limits; and Subareas 5 and 6 include areas both inside

¹⁹ An area’s ability to provide additional population capacity was calculated by multiplying the estimated number of additional dwelling units by the occupancy rates (95%) by persons per household (2.68 p/h in single family zones and 1.95 p/h in multi-family zones. City BLR, at 27.

²⁰ Exhibit 15 details additional population capacity for each of Everett’s six planning areas for Scenario 2 – the Adopted Targets scenario. There is no cumulative total for the entire planning area given. The figure noted is derived from adding the total capacity for each of the six planning areas.

²¹ The October 2004 analysis does not break out the additional capacity for the city limits of the City. *See* Ex. 15.

and outside the city limits – portions of the unincorporated UGA. Plan Update, Introduction, at 9.

In developing its Plan Update, the City considered three alternative growth scenarios. The three scenarios for the City and its MUGA were identified as: Existing Trends, Adopted Targets and High Growth in UGA. The Plan Update describes the three scenarios as:

The first [Scenario 1], Existing Trends, was based on the Buildable Lands data, which assumes development similar to that which occurred between 1995 and 2000. The second [Scenario 2], Approved Targets, assumed redevelopment of more parcels and construction of higher density multiple family housing, primarily around the downtown and along arterial corridors. The City would actively target investments and incentives in these areas. The third [Scenario 3], High Growth in UGA, assumed conversion of some single family neighborhoods to multiple family and more mixed use development in the Planning Area outside the City limits.

Plan Update, LU, at 10-11.

Accommodating Growth: Comparison of Population Capacity with 2025 Population Targets and the FLUM

Given these various data sets, updates, analyses, and scenarios, how does Petitioner Strahm challenge the City's ability to accommodate growth? Petitioner resorts to the Plan Update, the City BLR and other supporting exhibits referenced *supra*. Petitioner uses the uncontested 2001 population estimates for Everett's city limits and the entire planning area. Strahm PHB, at 5. To discern the additional population capacity Petitioner turns to the March 2004 City BLR, which accounted for the City's decision to reduce the planning area. *Id.* Instead of using the SCT 2025 population targets, Petitioner used the 2025 population targets adopted by the City. *Id.* at 5-6. The chart below illustrates Petitioner's calculations.

Petitioner Strahm's Capacity Calculations
Strahm PHB, at 5-6
[Based upon March 2004 City BLR Analysis – Ex. 2]

	Everett City Limits	Entire Planning Area [city limits + reduced planning area or MUGA]
2001 Estimated Population	95,990	131,003
Additional Population Capacity from 3/04 BLR	15,924	27,125
Total Population Capacity	111,914	158,128

Everett's Adopted 2025 Population Targets	123,060	167,519
Total Population Capacity	111,914	158,128
Surplus or (-Deficit)	(-11,146)	(-9,931)

Based upon the information provided in the Plan Update and the City BLR, Petitioner concludes that the *City's own adopted 2025 population target exceeds its population holding capacity*, thereby yielding a **deficit** in accommodating the projected population growth. Strahm PHB, at 5-8. Petitioner also refers to the City's own analysis, Ex. 4, to support the conclusion that in the entire planning area there is a deficit of 9,931. *Id.* at 6. The Board notes that this *deficit is even greater* if the SCT allocated population targets are compared to the total population capacity.

Petitioner conducts a similar analysis for the City's adopted employment targets and demonstrates that the City's adopted employment target is also higher than the employment capacity reflected in the March 2004 City BLR. Strahm PHB, at 6.

In response, the City does not quibble with Petitioner's math. Instead, the City asserts that Strahm's analysis is legally flawed since Petitioner has not demonstrated that the densities permitted on the City's FLUM do not accommodate the population projected. Everett Response, at 6-8. The City relies upon a 1997 decision of this Board discussing the duty to accommodate urban growth which stated:

This duty means that a city's comprehensive plan must include: (1) a future land use map that designates sufficient densities and intensities to accommodate any population and/or employment that is allocated. . .

Hensley v. City of Woodinville, CPSGMHB Case No. 96-3-0031, Final Decision and Order, (Feb. 25, 1997), at 9.

The City also contends that its BLR did not examine the designated densities for all lands within the City, since the area of some redevelopable and partially used parcels are reduced by 30%. Everett Response, at 7. Additionally, the City contends that the BLR is based upon conservative assumptions such as the assumption that vacant lands will develop at densities lower than permitted on the FLUM. *Id.*

In reply, Strahm argues: 1) that accommodating growth was not before the Board in the *Hensley* decision; 2) the City has a duty to encourage and stimulate growth; and 3) that if adopting a FLUM was all that was required, the Plan review and evaluation provisions would be meaningless. Strahm argues that to the contrary, a land capacity analysis is necessary to determine whether allocated population can be accommodated. Strahm Reply, at 1-4.

The FLUM

The Board finds that the *Hensley* decision was issued *prior* to: 1) the Buildable Lands Program being established in the GMA as a requirement; 2) the completion of any of the BLRs; and 3) the periodic Plan Updates being due. As the Board has noted *supra*, and explained in various cases, the buildable lands program provides important information to jurisdictions so that adjustments to their Plans and implementing regulations, if necessary, can be made. See CPSGMHB Digest of Decisions – Keywords: Buildable Lands and Land Capacity Analysis. In the *Hensley* decision, the important review and evaluation data was not a factor.

The Board acknowledges that the City itself has wisely chosen to include and build upon the information gleaned from its BLR in doing its land capacity analysis for the Plan Update. See City BLR, Ex. 2 and Ex. 15. The Board also notes that the incorporation of observed development information provides needed perspective for evaluating the theoretical capacity derived from FLUM designations.

The Board finds and concludes that a CPS jurisdiction may not simply rely upon FLUM designations, absent a supporting and corroborative land capacity analysis, to discharge its .110 duty to *include areas and densities sufficient to permit the urban growth that is projected to occur in the city for the succeeding twenty-year period*. This is especially true in light of the GMA's BLR and Plan Update review and evaluation requirements.

To further support this conclusion, the Board notes that the City's FLUM designates substantial areas in Subarea 5 and 6, areas *beyond its city limits*, for single family densities of between 5 and 10 dwelling units per acre. The City acknowledges that these areas,

[A]re presently unincorporated and for which Snohomish County has the responsibility for planning and land use permit administration. These are areas that have a reasonable chance of being annexed to the City within the twenty-year horizon of the GMA.

Plan Update, Introduction, at 7. What this means is that until such time as these areas are annexed by the City, Snohomish County's designations, not the City of Everett's, govern development in these areas. The Board takes **official notice** of Snohomish County's FLUM, which designates much of the same areas as Urban Low Density Residential (4-6 du/acre). Therefore, this inconsistency further undermines Everett's contention that *its* FLUM designations include areas and densities that will accommodate the projected twenty-year growth.

The Board finds and concludes that Petitioner's reliance on the data and land capacity analysis developed by the City, and used by the City in reviewing and evaluating its ability to accommodate growth is an appropriate means of carrying the burden of proof. Here, Petitioner has shown, based on the City's data and analysis, that the City faced a deficit in accommodating the projected twenty-year population target the City itself selected or in meeting the SCT population target.

A Shortfall

Significantly, in looking at the same data and analysis, the City reached the same conclusion as Petitioner during its Plan Update process – Everett’s land capacity did not meet its own projected targets. As noted *supra*, Exhibit 4 from the City’s own analysis and record supports Strahm’s contention of a deficit in meeting population targets of over 9,000 people. In fact, the City acknowledged the shortfall.

On September 8, 2004, the City convened a “Developers’ Forum” to address new strategies to encourage density and redevelopment within the City. At this gathering the City greets the participants by stating,

Everett, to 2025, needs to accommodate, on the low end, about 36,000 people, upwards to about 50,000, depending upon the alternative that is selected. Based on buildable lands on the low end, we’re around 9,000 people short; so that means we would have to see how we could accommodate more.

Ex. 17, at 4. Therefore, it cannot be disputed that as late as September 2004 the City acknowledged it was facing a shortfall in its ability to accommodate projected 2025 population.

However, the City contends that while it may have initially faced a deficit, its Plan Update process addressed it, and measures were adopted [other than extensive designation of areas at higher densities] in the Plan Update to erase the deficit. Thus, the Board concludes that evidence of a deficit in accommodating projected growth, *during the Plan Update process*, is not necessarily dispositive on the question of accommodating such growth.

Given these facts, the question then becomes: What did the City of Everett do to erase the shortfall? Did the City increase densities as Strahm contends is required, or did it decrease densities as Strahm asserts? Did the City adopt other strategies to increase densities to accommodate growth? Can the City refute Petitioner’s showing that the City’s own adopted targets exceed its capacity to accommodate the projected population growth?

City Steps to Address Shortfall

The Developers’ Forum focused on five key housing types (residential towers, 5 stories residential over 1 story parking or commercial, 3 stories residential over 1 story parking or commercial, townhouses and cottage developments). The Forum asked what areas *in the City* (Broadway, North Downtown, CBD, West Slope, Multi-family Neighborhood

Infill, East Central, Transit Station Area, and Riverfront)²² presented the best opportunities for the various higher density housing types. The group developed a series of ideas, strategies and recommendations for the Plan Update that would address the shortfall. *See* Exs. 16 and 17; and Everett Response, at 4. Included in the Report on the Developers' Forum was a matrix recommending different housing types for the different areas of the City evaluated. *See* Ex. 16.

Among the more general options discussed at the Forum was a lowering of height limits to stimulate development from a "speculative blight situation."²³ Everett Response, at 5. Other general recommendations of the group included: begin a neighborhood planning process, retain the multiple family tax abatement program, seek public/private investments for certain infrastructure to attract development, revise the zoning code to be more flexible, perhaps reduce height ceilings in some zones, develop flexible design standards, and a monitoring program to assess what works and what does not. Specific housing type recommendations were made for the different locations in the downtown area. (Collectively, the **Recommendations**) Ex. 18, at 4-7.

Subsequent to the September Developers' Forum, but prior to bringing the Recommendations on the Plan Update to the Planning Commission in March of 2005, the City updated its land capacity figures. Ex. 15. The October 2004 review analyzed the *effect of Scenario 2 "Adopted Targets" on capacity for additional population* – a forward looking land capacity analysis. As noted in footnote 27 *infra*, this October 2004 analysis assumed higher densities in the downtown core area – generally Subarea 1. However, this analysis addressed the entire reduced planning area/MUGA and did not break-out the population for Everett's city limits. Nonetheless, this analysis concluded that the entire planning area had an additional population capacity of 34,530. The chart below illustrates the calculations based upon the October 2004 land capacity analysis. Ex. 15.

²² These areas are located in Everett's Planning Subareas 1 and 2.

²³ The City explains "Speculative blight" in its brief by referring to testimony before the Planning Commission by John Owens, the City's consultant. Mr. Owens discussed the proposed strategies being recommended and stated,

So the strategies that. . .the team came up with is reduce allowable heights in a lot of these cases. And you're saying to me. . .aren't we trying to get more housing. . . Why would you ask us to reduce the height in some of these zones? And it's an interesting point. . .in many cases – the [current] height limits really don't correspond to reality. . .we've found some interesting things in other parts of the region that when you have too high of zoning, quite often you have a property owner believing that their – actual property values are dependent upon getting the full. . .height that they're allowed. And actually it can lead to what is called "speculative blight". . .So you'll see in this multi-family neighborhood infill that actually lowering the heights to 45 or 35 feet in some cases makes a lot of sense.

Everett Response, at 11; *see also* Ex. 19, March 15, 2005 Planning Commission Transcript, at 14-15, and September 8, 2004 Developers' Forum Transcript, at 51 – "[Y]ou had land owners sitting on vacant land until the market would support a high-rise, which could be decades and decades. [When the height limit was reduced] [S]uddenly, a lot of property came on the market and housing started to get built."

Capacity Calculations
[Based upon October 2004 Analysis – Ex. 15]

	Entire Planning Area [city limits + planning area or MUGA]
2001 Estimated Population	131,003
Additional Population Capacity from 10/04 Land Capacity Analysis for Scenario 2	34,560
Total Population Capacity	165,533
Everett's Adopted 2025 Population Targets	167,519
Total Population Capacity	165,533
Surplus or (-Deficit)	(-1,986)

This land capacity analysis for the Plan Update's Scenario 2 "Adopted Targets", done in October 2004, also supports Petitioner's assertion that *the City's own adopted target exceeds its population holding capacity*, thereby yielding a **deficit**, albeit a smaller deficit, in accommodating the projected population growth. Again, the Board notes that this *deficit is greater* if the SCT allocated population targets are compared to the total population capacity.

Still a Shortfall and Breach of Duty

A January 2005 staff briefing of the Planning Commission indicated that recent decisions²⁴ of the Planning Commission and City Council had helped reduce the 7000²⁵ person gap between the 2025 target and the land capacity analysis. Ex. 21, at 5.

In March of 2005, the Plan Update was reviewed by the City's Planning Commission, including the Recommendations arising out of the Developers' Forum. Staff indicated it would begin incorporating the Recommendations, including the matrix of housing types and locations, into the Plan Update. Ex. 18, at 8. It appears that most of these provisions and strategies found their way into the Plan Update. *See* Plan Update, Housing Element, at 1-70.

Recall that Everett was investigating three alternative scenarios during its Plan Update. The City's final statement regarding its capacity to accommodate its population targets under the three scenarios appears in Table 5 of the Plan Update's Land Use Element.

²⁴ Decisions referred to include: approving the Port of Everett North Marina Project, approving the Singh and Mitchrakawa rezones, allowing mixed uses along the shoreline.

²⁵ The basis for this figure is not among the documents or evidence provided to the Board.

Table 5: Total Population by Alternative

Alternative	Existing Trends	Adopted Targets	High Growth UGA
2001 Population	131,003	131,003	131,003
Additional Capacity ²⁶	30,165 ²⁷	36,516 ²⁸	38,893 ²⁹
Total Population Capacity	161,168	167,519	169,896 ³⁰

Plan Update, LU, Table 5, at 11. *As indicated in the Board’s footnotes to this Table, there was not a land capacity analysis, other supporting exhibits, evidence, or documentation provided or presented to the Board to corroborate the “Additional Capacity” figures noted in Table 5.*

The City’s Supplemental Environmental Impact Statement for the Plan Update did indicate that, “The three alternatives resulted in a population range from 161,168 to 169,896, *all below the Snohomish County Tomorrow target.*”³¹ *Id.* Plan Update, LU, at 13; (emphasis supplied). The Plan Update indicates that the “City Council selected a ‘Preferred Alternative’ which most closely resembles Alternative 2 Adopted Targets.” *Id.*

²⁶ The source of this data is not specified in the Plan Update, nor was the Board directed to a more current land capacity analysis [after Ex. 15.] or any other supporting exhibits or evidence to support Table 5.

²⁷ The Board notes that the City BLR – March 2004 update indicated 27,125, not the 30,165 shown in Table 5. The City did not direct the Board to any supporting evidence for the 30,165 figure.

²⁸ The Board notes that Ex. 15, the October 2004 City BLR update *focusing on this scenario*, shows an additional population capacity of 34,530, *not 36,516* for Scenario 2 – the Adopted Targets scenario. The City did not direct the Board to any supporting evidence for this 36,516 figure. However, comparing Ex. 15 with Table 4 in the Plan Update [Additional Population Capacity by Subarea and Alternative] indicates that: 1) the Ex. 15 calculations for Subareas 3, 4, 5 and 6 are essentially the same; 2) Subarea 2 in Table 4 is approximately 400 people less than Ex. 15 shows; and 3) Subarea 1 in Table 4 is about 2400 people higher than shown in Ex. 15. Nonetheless, there is no evidence provided to the Board to support an approximate 2000 person discrepancy between Table 5 [36,516] and Ex. 15 [34,530].

²⁹ As with the other “Additional Capacity” figures shown in this Table, there is no documentation or evidence provided to support this figure.

³⁰ The SCT target population for the City with the smaller planning area was stated as 181,270. However, the City states, “The audit target for this alternative was 181,270, but County land use changes did not result in the expected increase.” Plan Update, Introduction, at 14, footnote 2. The Board found no other reference indicating that the County or SCT had reduced its target for the smaller planning area. The Board takes **official notice** of the Snohomish County CPPs, which indicate that, using the City of Everett’s proposed boundary, and deleting the Stickney Lake Gap area from the Everett MUGA, the 2025 population target is an additional 58,210 people. Adding this to the city limits target of 123,060 yields the 181,270 population target.

³¹ The SEIS concluded that only the High Growth in the UGA scenario would meet the SCT employment target of 139,060. Plan Update, LU, at 13.

Table 5 in the Plan Update shows different capacity conclusions than any of the land capacity analyses in the record. The chart below parallels the charts *supra*, but excerpts information from Table 5.

Capacity Calculations
[Based upon Table 5, Plan Update]

	Adopted Targets [city limits + planning area or MUGA]
2001 Estimated Population	131,003
Additional Population Capacity ³²	36,516 ³³
Total Population Capacity	167,519
Everett's Adopted 2025 Population Targets	167,519
Total Population Capacity	167,519
Surplus or (-Deficit)	0

Table 5 from the Plan Update indicates that the City's capacity to accommodate the projected 2025 target population for the entire planning area is at *equilibrium*. However, the Board's review of the record has not disclosed any supporting documentation, exhibits or evidence after October 2004 to support the capacity figures depicted in this chart or Table 5 from the Plan Update. The lack of support for the City's Table 5 indicates a ***breach of the City's GMA duty*** to accommodate the projected 20-year population. The Board notes that even the *equilibrium* indicated on this chart reverts to a *deficit* if the SCT allocated population targets, rather than the City's adopted 2025 population targets are compared to the total population capacity reference here.³⁴

Density Increases

In its brief, the City argues that it adopted site specific and area specific strategies that increased density, and therefore would aid in filling the gap for accommodating the projected population. Everett Response, at 8-12. Site specific changes noted include: permitting *unlimited* density and decreasing height limitations in the R-4 and R-5 designations *near the City's core*; allowing unlimited density on *one parcel* (.87 acre); approval of a project in the North Marina area; and redevelopment changes for the shoreline area, and the sites of Asarco, Providence Everett Medical Center, and the Community College. *Id.* at 9. The Board notes that each of these site specific changes appear to be largely within the Everett city limits, focusing on certain downtown areas.

³² No source documents were referenced indicating the basis of this calculation.

³³ No supporting documents were referenced to provide the basis for this calculation. This figure varies from the October 2004 capacity analysis done for Scenario 2 "Adopted Target" by almost 2000.

³⁴ If the SCT allocated population target of 181,279 is used the deficit is 13,760; if the apparent "audited" SCT allocated population target of 169,896 is used the deficit is 2,377.

Additionally, the City argues it has adopted and identified specific redevelopment “Housing Strategy Areas” and Illustrative Housing Types corresponding to the Recommendations from the Developers’ Forum, in the Plan Update. Plan Update, Housing Element, at 21-70. The Board notes that each of the Housing Strategy Areas appears to fall within the Everett city limits – Subareas 1 and 2.

The City states that it has identified 21 different Administrative and Financial Measures to implement its Plan Update. The City indicates that four of these measures address barriers to achieving urban density. Everett Response, at 10. The noted measures are:

- Provide public amenities. . .to encourage private investment in high density housing in strategy areas and near the downtown [#16]
- Extend the multiple family tax abatement program to high density strategy areas outside the CBD. . .[#17]
- Conduct area or neighborhood plans for high density strategy areas. . .start with a focused market analysis.[#19]
- Complete sewer and water plans that analyze localized improvements needed for *high density development in strategy areas*. . .

Id. underlining in original, *italics* supplied. Strahm does not dispute that administrative and financial incentives and investments can influence development, but argues that the City has not quantified these measures to show that capacity exists to meet projected population growth. Strahm PHB, at 13.

The City argues that the Plan Update also includes sixteen Examples of Specific Potential Zoning Code Changes that are measures that are intended to increase flexibility and density; yet Petitioner only criticizes the few measures that suggest reducing building height limits in different zones for different Housing Strategy Areas. Everett Response, at 10, *Citing* to Plan Update, Housing Element, at 18-19. In essence, the City asserts, Petitioner’s contention is that reductions in building height equate to reductions in density. *Id.* *Citing* Strahm PHB, at 12-16. The City counters that while the notion of reducing heights to produce higher density seems counterintuitive, there is ample evidence in the record [*e.g.* specifically referring to success with such approaches in Tacoma and Seattle] to support the height reduction strategy. *Id.* at 11.

The Board’s review of Everett’s evaluation process and its Plan Update, specifically the Housing and Land Use Element, suggests that the City has embarked upon a genuine and serious housing strategy to encourage redevelopment, specifically higher density redevelopment, *within its city limits*, particularly in its identified Housing Strategy Areas. The approach the City has taken clearly contains measures, such as focused incentives and investments, to increase density.

While the GMA requires compact urban development through higher densities, it does not compel increases in FLUM designations as the only means of achieving higher

density, as Petitioner asserts. Here, the Board agrees with the City that there is evidence in the record to support the City of Everett's Housing Strategy Areas approach as one that will likely increase density, not decrease it. However, the City has failed to quantify this contribution and demonstrate that it has not breached its GMA duty to accommodate projected growth. By failing to do so, the City has not rebutted the *prima facie* case made by Petitioner.

To summarize, the Board agrees with Petitioner that Everett's land capacity analysis, *i.e.* Ex. 15, falls short of supporting the Plan Update; and therefore, does not support the City's conclusion, expressed in Table 5, that the City can accommodate the City's own selected 2025 population targets or those allocated by the SCT. This is a **clear error** by the City. While the Board, like the City, surmises that during the twenty-year planning period the City's Land Use and Housing Elements for the central core and corridors of the City [especially the Housing Strategy Areas], have a high likelihood of erasing the deficit between capacity and the established 2025 population target of 123,060³⁵ within Everett's city limits, the City needs to quantify this conclusion by providing a supporting land capacity analysis to discharge its GMA duty and rebut Petitioner's demonstration of noncompliance. If the City cannot quantify that it can accommodate a 2025 population of 123,060 within its city limits under the Plan Update, it must amend its Plan Update to include additional measures to accommodate projected population.

As to the planning area or MUGA, the Board finds the City's actions to be **clearly erroneous** for the following reasons: 1) Until the unincorporated areas are annexed, the County's FLUM and development regulations, not the City's, govern in the unincorporated planning area; 2) The City's adopted 2025 population target and the *smaller* area it has selected to plan for have not been reconciled with the SCT population allocation and the County's assigned planning area; 3) The land capacity analysis provided in this record [Ex. 15] suggests that the major deficiencies in providing capacity to meet the allocated 2025 population occur in the unincorporated areas beyond the city limits; 4) The focus of the City's efforts to decrease or eliminate its acknowledged capacity shortfall, from the early Developers' Forum through adoption of the Plan Update, was a redevelopment strategy to increase densities within the core of the City – Subareas 1 and 2 – there was no apparent parallel effort for the planning area – Subareas 4, 5 and 6; and 5) The City evaluated its land capacity on several occasions during the Update process,³⁶ to document its progress and status, yet there is no supporting or corroborating documentation to verify the equilibrium conclusions presented in Table 5 of the Plan Update for the Adopted Targets scenario – the preferred and adopted alternative.

Therefore, the Board finds the City's actions, as discussed *supra*, are **clearly erroneous** and **noncompliant** with the requirements of RCW 36.70A.110(2) and .130(3) and the

³⁵ This target is the City's selected population target and the SCT's allocated population target for Everett's city limits.

³⁶ See Exs. 2 and 15.

Board will **remand** the Plan Update to the City of Everett with direction for the City to quantify its holding capacity within its city limits and reconcile its *planning area* and *target population for 2025* with Snohomish County and take the necessary legislative actions to include areas and densities sufficient to accommodate the projected 2025 population. These actions are necessary for the City to discharge its duty under RCW 36.70A.110(2) and .130(3).

City Limits, Planning Area and .115 – Legal Issue D:

On this issue, Petitioner asserts that the City’s Plan Update does not distinguish between city limits and the planning area and their respective capacities to accommodate the 2025 targets. Strahm PHB, at 19-20. Petitioner relies upon the language of .115 directing that cities and counties shall “provide sufficient capacity of land suitable for development *within their jurisdictions* to accommodate” the projected population. *Id.* The City counters that pursuant to the GMA tenet of *transformation of governance*,³⁷ the City is likely to annex the planning area by 2025, thus, it need not distinguish between its city limits and the planning area since these areas are *within its jurisdiction*. Everett Response, at 13. The City then argues that boundaries and existing densities shown in a [retrospective] BLR would not constitute noncompliance so long as the designated [FLUM] densities and reasonable measures identified will accommodate the 20-year projections. *Id.*

The City’s arguments miss the importance of the information assembled from the BLR process. This information is a vital input into the required, and prospective, land capacity analysis needed to answer the questions and meet the requirements of RCW 36.70A.110 and .130 – Will the jurisdiction’s 20-year Plan accommodate the 20-year projected growth? The City in fact, relied on the BLR data in building a prospective land capacity analysis. *See* Ex. 2; and especially Ex. 15. Unfortunately, the record is devoid of any revised land capacity analysis after the October 2004 spreadsheet land capacity analysis [Ex. 15], to support Table 5 in the Plan Update.

Providing sufficient land capacity to accommodate projected growth is a jurisdiction’s duty under the GMA, it is an obligation and duty the jurisdiction must discharge. RCW 36.70A.110. However, the Board observes that: if a jurisdiction’s land capacity analysis quantifies and documents that there clearly is sufficient capacity of land suitable to accommodate the projected growth within a jurisdiction’s city limits *and* its unincorporated planning area; and if there is consistency and congruency between a city and county as to the planning area and population to be accommodated [*i.e.* no dispute]; then, there is no need to differentiate between the incorporated and unincorporated areas. However, that is not the situation in the present matter.

³⁷ *See* CPSGMHB Digest of Decisions 1992 – 2006, Keyword “Transformation of Governance” for cases discussing this tenet.

Here the City, as noted *supra*, is banking on its redevelopment housing strategy, as adopted in the Plan Update, to stimulate increased density on-the-ground in the Housing Strategy Areas, therefore possibly providing the additional land capacity to accommodate the 2025 projected population within the city limits. However, as discussed *supra*, a supporting land capacity analysis to quantify and document this result is missing. The October 2004 land capacity analysis reflects a greater capacity than originally calculated by the City and used by Strahm, and the capacity increases appear to occur within Subareas 1 and 2. But this analysis does not distinguish between the city limits and the planning area and still indicates *a deficit for the entire area*. See Table illustrating Ex. 15, *supra*.

Consequently, given the *unreconciled* differences between the City and the County on the planning area and population, and the City's lack of documentation that it can accommodate the projected 2025 growth within its city limits, the Board finds **noncompliance** with RCW 36.70A.115.

The City has not quantified or documented that it can provide sufficient capacity of land suitable for development *within its jurisdiction* – to accommodate the allocated housing and employment growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management. The Board will **remand** the Plan Update with direction to either quantify through a land capacity analysis that fully considers the Plan Update's provisions for increasing density and documents that *within its city limits* Everett can accommodate the 2025 projected growth; or through the reconciliation process provide a land capacity analysis that demonstrates that it has sufficient land capacity within the entire planning area to accommodate the projected 2025 growth; or take other actions to increase density in order to accommodate the projected 2025 growth.

Show Your Work – Legal Issue E:

In relation to this issue, Petitioner refers back to the argument and analysis offered regarding compliance with .110(2), .115 and .130. Strahm PHB, at 21-22. In response, the City counters that Board has limited the “show your work” provision to the sizing of UGAs and it does not apply to provisions of the City's Housing Element. Everett Response, at 13-14. The City misses the point of “showing your work.”

The City is partially correct in noting that the genesis of “showing your work” derives from RCW 36.70A.110 and the sizing of UGAs. However, the work that must be shown, in the context of sizing UGAs, is whether there is sufficient land capacity to accommodate the projected growth within the UGA. The present matter involves the same question and derives from the duty imposed by .110(2), as well as the duties imposed by .130(3) and .115. Therefore, the same rationale applies here, and the City must discharge this GMA duty on **remand**.

Conclusion

The provisions of RCW 36.70A.215 are not *directly* applicable to Everett's Plan Update, and Legal Issue G will be **dismissed**.

Pertaining to RCW 36.70A.110(2), .130(3), and 115, Legal Issues A, C, D and E, as set forth *supra*, the Board finds and concludes as follows:

- The City's action was **clearly erroneous** and the challenged portions of the City of Everett's Plan Update **do not comply** with RCW 36.70A.110(2), .130(3) and .115 – the City has not shown its work to discharge its GMA duty or support its conclusion that it can accommodate the projected 2025 growth. The Board will **remand** the Plan Update with direction to the City to *quantify its holding capacity within its city limits and reconcile its entire planning area and target population for 2025 with Snohomish County or take other actions to increase density in order to accommodate the projected 2025 growth*. Following the reconciliation process, but within the remand period, the City shall take any necessary legislative actions to revise the Plan Update to include areas and densities to accommodate the projected 2025 population.

B. LEGAL ISSUE NO. B – INTERNAL INCONSISTENCY

Legal Issue B³⁸ alleges that the Plan Update is internally inconsistent, contrary to the requirements of RCW 36.70A.070.

Applicable Law

RCW 36.70A.070 provides in relevant part:

The plan shall be an internally consistent document and all elements shall be consistent with the future land use map.

³⁸ **Legal Issue B** – *Does the Plan Update fail to comply with RCW 36.70A.070, which requires comprehensive plans to be internally consistent, when the rate and density of the City's projected housing needs in the Plan Update are not consistent with the Housing Element Implementation strategies (See Plan Update, Ch 4.VI).*

a. Is the Plan Update internally inconsistent when it recognizes that adequate capacity to accommodate the population and employment targets can be achieved only if redevelopment occurs faster and if higher densities are encouraged (Plan Update Ch 4.III.B.8), but states that, "The City will not make many changes to its allowable densities" (See Plan Update, Ch. 2.III.D., p.16), and those few "changes" (See Plan Update, Ch 4.VI) would tend to reduce densities rather than increase them?

b. Is the Plan Update's list of potential measures to implement housing policies (See Plan Update Sections VI.C.11., 12., 13., 14., and VI.D., generally), inconsistent with the Buildable Lands analysis (referenced in the "Projected Housing Needs" section, Ch 4. III.B.8.) that indicates that insufficient land capacity is available for the number of dwelling units required to meet the City's allocation of additional population and employment?

Discussion

Position of the Parties:

Petitioner reasserts that the gap between land capacity and target population is an internal inconsistency within the Plan Update and that the proposed implementing measures in the Land Use and Housing Element related to decreasing building height and adjusting FARs will effectively reduce density, rather than increasing it. Strahm PHB, at 16-19.

The City counters that RCW 36.70A.070 pertains to internal consistency between Plan elements, not between the Plan's Housing or Land Use element and "outside" documents. Everett Response, at, 12. The City further asserts that the Housing Strategies are intended to create incentives to realize the densities on the FLUM and they are supported by the record as having the effect of increasing, not decreasing density. *Id.*

Board Discussion:

As discussed and decided in Legal Issues A, C, D, E and G *supra*, the Petitioner demonstrated that the City has failed to discharge certain GMA duties as required by RCW 36.70A.110(2), .130(3) and .115 because provisions of its Plan Update lacked the required supporting analysis and documentation. The Board will remand the Plan Update in order for these duties to be discharged and the noted discrepancies reconciled and eliminated. However, these issues are not internal inconsistency issues as are typically presented to the Board. RCW 36.70A.070(preamble) requires internal consistency among Plan elements and the FLUM.

Nonetheless, Petitioner asserts that certain implementing measures, particularly regarding building height reduction and FARs are inconsistent with the Land Use and Housing Elements. Strahm PHB, at 16-19. The City counters that none of the density increasing measures noted in the Plan Update suggest alterations to the City's FARs as challenged by Petitioner, yet Petitioner Strahm imports materials from other City planning efforts into this challenge. *Id.* at 11-12. The Board agrees with the City. As discussed in Legal Issues A, C, D and E, *supra*, there is ample evidence in the record to support the City's choices regarding building height reductions, and the Board's review of the Plan Update does not disclose any proposed adjustments to FARs. Here, the Board defers to the City's policy choices. In short, Petitioner has **not carried the burden of proof** in demonstrating noncompliance.

Implicit in the Board's review of the prior issues in this case, is that the Board finds the City's implementation strategies, including administrative flexibility, incentives and capital investments measures to be consistent with, and implementing the Land Use and Housing Element provisions. Therefore, Petitioner's challenge to RCW 36.70A.070, Legal Issue B, is **dismissed**.

Conclusion

Petitioner has **not carried the burden of proof** in demonstrating noncompliance with the internal consistency requirement of RCW 36.70A.070. Therefore, Petitioner's challenge to RCW 36.70A.070, Legal Issue B, is **dismissed**.

C. LEGAL ISSUE NO. F – EXTERNAL and CPP INCONSISTENCY

Legal Issue F³⁹ alleges that the Plan Update is externally inconsistent, and inconsistent with several County-wide Planning Policies, contrary to the requirements of RCW 36.70A.100 and .210.

Applicable Law

RCW 36.70A.100 provides in relevant part:

The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county or city has, in part, common borders or related regional issues.

RCW 36.70A.210 provides in relevant part:

A countywide planning policy is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. *This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100.*

(Emphasis supplied).

Discussion

Position of the Parties:

Petitioner Strahm contends that the City's failure to accommodate growth and increase densities fails to comply with Snohomish County CPPs UG-1j, UG-2, UG-7, UG-8, UG-10, UG-13 and UG-14, all generally dealing with various aspects of accommodating growth in urban areas. Strahm PHB, at 22-26. Everett counters that its Plan Update is

³⁹ **Legal Issue F** – *Does the Plan Update fail to comply with RCW 36.70A.210 and RCW 36.70A.100, because it is inconsistent with the adopted countywide planning policies: UG-1, UG-2, UG-7, UG-8, UG-10, UG-13 and UG-14?*

consistent with each of the CPPs set forth by Petitioner. Everett Response, at 15-16. Petitioner stands on the arguments in the PHB. Strahm Reply, at 1.

Board Discussion:

RCW 36.70A.210 requires adoption of CPPs and these CPPs direct that a jurisdiction's Plan must be consistent with the adopted GMA-compliant CPPs. The Board has often stated that the adopted CPPs are binding on GMA planning jurisdictions. See CPSGMHB Digest of Decisions – Keyword – County-wide Planning Policies – CPPs. The Supreme Court has also opined on the importance of CPPs and their relationship to Plans. In *King County v. Central Puget Sound Growth Management Hearings Board*, 138 Wn 2d 161, 176, 979 P 2d 374 (1999), the Supreme Court stated, “A UGA designation should not stand simply because CPPs mandated its adoption. Rather upon a determination that the provision violates the GMA, it should be stricken from both the comprehensive plan and the CPPs.” Thus, the CPPs have directive authority, so long as they do not violate the GMA.

First, as discussed *supra*, the provisions of RCW 36.70A.215 are not applicable to the Plan Update. Therefore, CPP UG-14, which establishes the methodology and parameters for the Buildable Lands Program is also not applicable in the present matter. Second, CPP UG-7 directs the development of regulations and incentives to encourage higher densities so that growth is accommodated within the UGAs and CPP UG-10 directs that incentives for multi-story commercial and mixed use development be employed. As discussed *supra*, the City's Housing Strategies have established that provisions of its Plan Update comply with these CPPs. Third, the sizing and delineation of UGAs is a duty of the County; while cities are involved in the process, it is the County that ultimately sizes and designates the UGAs within its borders. CPP UG-1j is specifically binding on the County as the entity responsible for designating UGAs, not the City of Everett.

CPP UG-2 establishes the sub-county population and employment allocation process, vesting the authority in the SCT to allocate population targets to the cities and their respective MUGAs. As discussed previously, the City of Everett adopted population targets different and lower than those assigned by the SCT - population targets which, the Board has determined, the City has not documented that it can meet. However, CPP UG-2 also sets forth a “reconciliation process” whereby once the Plan Updates are adopted [by December 1, 2004, per RCW 36.70A.130(4)], if discrepancies exist, the city and the county are to jointly review the Plans using the SCT allocation process and, if necessary, recommend adjusted targets or MUGAs to the County Council. This process was to be completed by October 1, 2005. However, there is no evidence in the record to indicate that a reconciliation process has begun or been completed in relation to the City of

Everett.⁴⁰ Petitioner seems to assert that the City has not reconciled discrepancies within the timeframe of CPP UG-2(b).

Petitioner Strahm also argues that “Because the Update adopts growth targets that are for the Planning Areas, it is impossible to tell whether the City is, in fact, following CPP UG-2 in accepting its allocation of growth.” Strahm PHB, at 23. City responds that “[T]his assertion fails to meet Strahm’s burden of establishing a failure to comply.” Everett Response, at 16. The Board has determined that Petitioner has carried the burden of proof and the City has failed to rebut Petitioner’s arguments and the Board is convinced that the City was clearly in error regarding compliance with RCW 36.70A.110(2), .130(3) and .115, especially as it relates to the unincorporated planning area. Noncompliance with those GMA provisions links directly to this CPP and the reconciliation process. As the Board has indicated, the Plan Update is being remanded so that additional analysis and, if necessary, reconciliation can occur. The Board will not find noncompliance here, but expects that the City and County will expeditiously pursue the reconciliation process as needed. In doing so, the discussions should be cognizant of the provisions of CPPs UG-7 and CPP UG-8, as they may relate to the unincorporated planning area/MUGA.

CPP UG-13 directs all Snohomish jurisdictions, including the County, to “[U]se *land capacity analysis* methods that are consistent among jurisdictions to calculate holding capacity as approved by the SCT.” See CPP UG-13. The County here is talking about forward looking land capacity methodologies, not backward looking assessments for Buildable Lands reports. This CPP, read in light of CPP UG-14, confirms that Snohomish County and its cities understand the distinction between the Buildable Lands review (occurring every five years as a “check-in” point in planning) and a *land capacity analysis* that is required to accompany periodic reviews where new population allocations are assigned based on OFM-projected populations that *must be accommodated* pursuant to RCW 36.70A.110(2), .130(3) and .115.

Nonetheless, Petitioner here *merely* refers to 1993 SCT methodology adopted to address the initial Plan adoptions in 1994-95 and offers nothing more. Strahm PHB, at 24-25; and Ex. 10. Petitioner does not, for example, compare and contrast the City’s 2004 land capacity analysis to the Land Capacity Analysis done by Snohomish County or any other jurisdiction. *Id.* Also, as the City notes, this simple methodology has evolved over the last decade, primarily due to geographic information systems (**GIS**) technology and the Buildable Lands methodology. Everett Response, at 16; and Ex. 14. The SCT appears to have accepted this newer methodology for analytical purposes. *Id.* The Board agrees with the City; the evolving land capacity analysis methodology has become less theoretical and more sophisticated, accurate and useful in evaluating *future* needs.

⁴⁰ The Board is aware, from briefing and argument on another matter before this Board – *Pilchuck VI v. Snohomish County*, CPSGMHB Case No. 06-3-0015c, that the “reconciliation process” is in progress, but has been lagged to await adoption of city Plan Updates.

Petitioner has failed to carry the burden of proof in demonstrating an inconsistency with CPP UG-13.

Conclusion

Petitioner has clearly **failed to carry the burden of proof** in demonstrating noncompliance with RCW 36.70A.210 pertaining to Snohomish County CPPs UG-1j, UG-7, UG-8, UG-10, UG-13 and UG-14. CPP UG-2 addresses the County allocation process and a “reconciliation process” to resolve discrepancies between City Plans and the County’s allocation. As discussed *supra*, in Legal Issues A, C, D and E, the City needs to document its land capacity and its selected population targets, and may need to pursue the reconciliation process [per CPP UG-2(b)] with the County regarding the unincorporated planning area. However, the Board understands Petitioner’s argument to be that the County did not complete the “reconciliation process” on time. This apparently is true. However, the jurisdictions of Snohomish County have an established process to address discrepancies such as those found in the present matter. Consequently, the Board finds that the Petitioner has not carried the burden of proof regarding CPP UG-2, and the Board will not find noncompliance with RCWC 36.70A.210. The Board’s remand will correct the error, if any, stemming from delay of reconciliation process as outlined in CPP UG-2.

D. INVALIDITY

The Board has previously held that a request for invalidity is a prayer for relief and, as such, does not need to be framed in the PFR as a legal issue. *See King County v. Snohomish County*, CPSGMHB Case No. 03-3-0011, Final Decision and Order, (Oct. 13, 2003) at 18. Petitioner’s prayer for relief asks that the Board invalidate the Plan Update for noncompliance with the challenged provisions of the Act. PFR, at 6.

Applicable Law

RCW 36.70A.302 provides:

- (1) A board may determine that part or all of a comprehensive plan or development regulation are invalid if the board:
 - (a) Makes a finding of noncompliance and issues an order of remand under RCW 36.70A.300;
 - (b) Includes in the final order a determination, supported by findings of fact and conclusions of law, that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter; and
 - (c) Specifies in the final order the particular part or parts of the plan or regulation that are determined to be invalid, and the reasons for their invalidity.

- (2) A determination of invalidity is prospective in effect and does not extinguish rights that vested under state or local law before receipt of the board's order by the city or City. The determination of invalidity does not apply to a completed development permit application for a project that vested under state or local law before receipt of the board's order by the City or city or to related construction permits for that project.

Findings of Fact and Conclusions of Law

As set forth *supra*, the Board has found certain aspects of the City's Plan Update to be noncompliant with RCW 36.70A.110(2), .130(3) and .115 [Legal Issues A, C, D and E]. The question for the Board then, is whether this noncompliance substantially interferes with the fulfillment the goals of the Act. The Board cannot find such interference. The City has done an exceptional job of developing a housing redevelopment strategy for its downtown core area and immediate environs [the Housing Strategy Areas]. It has partially documented the effect this strategy will have on increasing density within the City. The Board suspects that removing this barrier to compliance should be relatively easy to do by adjusting assumptions in the land capacity analysis to reflect the full provisions included in the Plan Update's Land Use and Housing Elements. Completing this action will provide convincing evidence that the City has discharged its GMA duties within the city limits. As to the documented deficit of not having provided capacity for the City's own adopted, but different than the SCT, 2025 population targets, this matter should be resolved, if necessary, through an existing, but apparently delayed, reconciliation process with the County. Neither of the errors causes substantial interference with the goals of the Act. The Board therefore **declines** to enter a determination of invalidity.

VI. ORDER

Based upon review of the Petition for Review, the briefs and exhibits submitted by the parties, having reviewed the Plan Update and the record provided, considered the arguments of the parties, and having deliberated on the matter the Board ORDERS:

1. The provisions of RCW 36.70A.215 are not *directly* applicable to Everett's Plan Update, and Petitioner's Legal Issue G is **dismissed with prejudice**.
2. Pertaining to RCW 36.70A.110(2), .130(3), and 115 , Legal Issues A, C, D and E, as set forth *supra*, the Board finds and concludes as follows:
 - The City's action was **clearly erroneous** and the challenged portions of the City of Everett's Plan Update **do not comply** with RCW 36.70A.110(2), .130(3) and .115 – the City has not shown its work to discharge its GMA duty or support its conclusion that it can accommodate the projected 2025 growth. The Board will **remand** the Plan Update with

direction to the City to quantify its holding capacity within its city limits and reconcile its entire planning area and target population for 2025 with Snohomish County, or take other legislative action to increase density in order to accommodate the projected 2025 growth. Following the reconciliation process, but within the remand period, the City shall take any necessary legislative actions to revise the Plan Update to include areas and densities to accommodate the projected 2025 population.

3. Regarding internal consistency as addressed in RCW 36.70A.070, Petitioner has **not carried the burden of proof** in demonstrating noncompliance. Therefore, Petitioner's challenge to RCW 36.70A.070, Legal Issue B, is **dismissed with prejudice**.
4. Petitioner has **failed to carry the burden of proof** in demonstrating noncompliance with RCW 36.70A.210 pertaining to Snohomish County CPPs UG-1j, UG-2, UG-7, UG-8, UG-10, UG-13 and UG-14. Legal Issue F is **dismissed with prejudice**.

The Board has found and concluded that certain aspects of the City of Everett's adoption of its Plan Update were **clearly erroneous** and **do not comply** with the requirements of RCW 36.70A.110(2), .130(3) and .115. Therefore the Board **remands** the Plan Update to City of Everett with direction to the City to take the necessary legislative actions to comply with the requirements of the GMA as set forth and interpreted in this Order – Legal Issues A, C, D and E.

- The Board establishes **March 14, 2007**, as the deadline for the City of Everett to take appropriate legislative action.
- By no later than **March 28, 2007**, the City of Everett shall file with the Board an original and four copies of the legislative enactment described above, along with a statement of how the enactment complies with this Order (**Statement of Actions Taken to Comply - SATC**). The City shall simultaneously serve a copy of the legislative enactment(s) and compliance statement, with attachments, on Petitioners. By this same date, the City shall also file a "**Compliance Index**," listing the procedures (meetings, hearings etc.) occurring during the compliance period and materials (documents, reports, analysis, testimony, etc.) considered during the compliance period in taking the compliance action.

- By no later than **April 11, 2007**,⁴¹ the Petitioners may file with the Board an original and four copies of Response to the City's SATC. Petitioners shall simultaneously serve a copy of their Response to the City's SATC on the City.
- Pursuant to RCW 36.70A.330(1), the Board hereby schedules the Compliance Hearing in this matter for **10:00 a.m. April 26, 2007**, at the Board's offices. If the parties so stipulate, the Board will consider conducting the Compliance Hearing telephonically. If the City of Everett takes the required legislative action prior to the **March 14, 2007**, deadline set forth in this Order, the City may file a motion with the Board requesting an adjustment to this compliance schedule.

So ORDERED this 15th day of September 2006.

CENTRAL PUGET SOUND GROWTH MANAGEMENT HEARINGS BOARD

David O. Earling
Board Member

Edward G. McGuire, AICP
Board Member

Margaret A. Pageler
Board Member

Note: This order constitutes a final order as specified by RCW 36.70A.300 unless a party files a motion for reconsideration pursuant to WAC 242-02-832.

⁴¹ **April 11, 2007** is also the deadline for a person to file a request to participate as a "participant" in the compliance proceeding. See RCW 36.70A.330(2). The Compliance Hearing is limited to determining whether the City's remand actions comply with the Legal Issues addressed and remanded in this FDO.

APPENDIX A

Procedural Background

A. General

On September 29, the Central Puget Sound Growth Management Hearings Board (the **Board**) received a Petition for Review (**PFR**) from F. Robert Strahm (**Petitioner** or **Strahm**). The matter was assigned Case No. 05-3-0042, and is hereafter referred to as *Strahm v. City of Everett*. Board member Bruce Laing is the Presiding Officer for this matter. Petitioner challenges the City of Everett's (**Respondent** or **City**) adoption of Ordinance No. 2855-05, which adopts the City's Comprehensive Plan Update, as noncompliant with the Growth Management Act (**GMA or Act**).

On October 10, 2005, the Board issued its Notice of Hearing (**NOH**), setting the date for a prehearing conference (**PHC**).

On October 31, 2005, the Board conducted the PHC at Suite 2430, Union Bank of California Building, 900 Fourth Avenue, Seattle. Board member Bruce Laing, Presiding Officer in this matter, conducted the conference, with Board members Ed McGuire and Margaret Pageler in attendance. C. Thomas Tuohy represented Petitioner F. Robert Strahm, who accompanied Mr. Tuohy. Eric S. Laschever represented Respondent City of Everett. Dave Koenig, Everett Long Range Planner, accompanied Mr. Laschever.

On November 4, 2005, the Board received Stipulated Motion Requesting Extension to Explore Settlement, signed by Petitioners and Respondent. The motion requested a ninety-day extension which would allow the parties an opportunity to resolve the issues in the petition through the City's downtown planning process that is now underway.

On November 7, 2005, the Board issued its "Prehearing Order and Order Granting Settlement Extension" (**PHO**). The PHO granted a ninety day settlement extension, set forth a case schedule and identified the legal issues to be addressed in this matter.

On January 27, 2006, the Board received Stipulated Motion Requesting 90 Day Extension to Further Explore Settlement.

On February 2, 2006, the Board issued its "Order Granting Second Settlement Extension."

On May 2, 2006, the Board received a "Settlement Status Report." Petitioner Strahm indicated that none of the issues raised in the appeal had been settled, and "Petitioner intends to proceed with the case."

B. The Record - Motions to Supplement the Record and Amend the Index

On October 31, 2005, the Board received the City of Everett's Index.

There were no motions to supplement the record filed or amendments to the Index in this matter.

On June 7, 2006, the Board received the following Core Document from the City of Everett: City of Everett Comprehensive Plan – August 10, 2005 Update.

C. Dispositive Motions

There were no dispositive motions filed in this matter.

D. Briefing and Hearing on the Merits

On July 3, 2006, the Board received "Petitioner F. Robert Strahm's Prehearing Brief" (**Strahm PHB**), with a table of exhibits and 12 attached tabbed exhibits.

On July 18, 2006, the Board received "Respondent City of Everett's Prehearing Brief" (**Everett Response**), with a notebook of "Consolidated Exhibits of Petitioner and Respondent" including 24 tabbed exhibits. The City also filed "Respondent City of Everett's Motion to Strike Petitioner's Prehearing Brief Exhibits 5, 7, 8 and 9."

On July 26, 2006, the Board received "Petitioner F. Robert Strahm's Reply Brief" (**Strahm Reply**). Petitioner also filed "Motion to Submit Supplemental Exhibit and Response to Motion to Strike," with an attached proposed exhibit.

All briefing and exhibits were timely filed.

On August 3, 2006, the Board held a hearing on the merits (**HOM**) at the Board's offices in Suite 2470, 900 4th Avenue, Seattle, Washington. Board members Bruce C. Laing, Edward G. McGuire, and Margaret A. Pageler were present for the Board. Board member Laing opened the HOM as the presiding officer, explaining that his tenure with the Board was ending⁴² and that Dave Earling had been appointed as the new Board member.⁴³ Mr. Laing then passed the gavel to Mr. McGuire, who would assume presiding officer duties for the remainder of this matter. Board Law Clerk, Julie Taylor attended the hearing. Petitioner Strahm was represented by C. Thomas Touhy. Respondent City of Everett was represented by Eric S. Laschiver. Court reporting services were provided by Andrea Clevenger of Byers and Anderson Inc. Dave Koenig, Mary Cunningham and Douglas J. Steding also attended the HOM. The hearing convened at 10:00 a.m. and adjourned at approximately 12:30 p.m. A transcript of the hearing was ordered.

On August 9, 2006, the Board received the transcript of the hearing. (**HOM Transcript**)

⁴² Mr. Laing's last day on the Board was August 9, 2006.

⁴³ Mr. Earling's first day on the Board was August 10, 2006.